

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

AUGUST ALLEN and DORIS ALLEN,

Debtors.

Case No. 06-45938

Chapter 7

Judge Thomas J. Tucker

ORDER DENYING DEBTORS' *SECOND* MOTION FOR RECONSIDERATION

This case is before the Court on "Debtor's [sic] Motion to Reinstate Case on Equity Grounds," filed on June 20, 2006 (Docket # 37), which this Court construes as a motion for reconsideration. This is Debtors' *second* motion for reconsideration.

Having reviewed and considered this second motion for reconsideration, the Court finds that the motion fails to demonstrate a palpable defect by which the Court and the parties have been misled, and that a different disposition of the case must result from a correction thereof. *See* Local Rule 9024-1(c).

In addition, the Court notes the following. On May 12, 2006, the Court entered an "Order Directing the Filing of Official Form(s)." The Order responded to the outdated forms filed by Debtors that same day. The Order provided, in relevant part:

This Court is advised that the debtor(s) has failed to file the official bankruptcy forms pursuant to F.R. Bankr.P. 9009. The following documents were not submitted in proper form as mandated by the Judicial Conference of the United States:

- ✓ Official Form 1 Voluntary Petition (Revised on 10/05)
- ✓ Official Form B6 Summary of Schedules and Statistical Summary (Revised on 10/05)
- ✓ Official Form 6 Schedules A-J and Declaration (Revised on 10/05)

✓ Official Form 7 Statement Financial Affairs (Revised on 10/05)

...

IT IS FURTHER ORDERED that the above named debtor(s) file an amended document, on the official bankruptcy form, no later than fifteen (15) days from the date of the entry of this order.

IT IS FURTHER ORDERED that if the debtor(s) fails to timely file the amended document, this case may be dismissed without a hearing.

Despite Debtors receiving clear and definite notice that (1) the forms they filed were deficient and unacceptable; (2) that they had a 15 day deadline to correct the deficiency by filing the documents specified in the Order on the official forms ("Revised on 10/05"); and (3) that the Court may dismiss Debtors' case without a hearing if they failed to timely file the specified official forms, Debtors took no action whatsoever (*i.e.*, they did not file the documents specified on official forms nor did they move for an extension of time to comply with the Court's Order). As a result, the 15 day deadline expired, and on May 31, 2006, the Court dismissed the case for Debtors' failure to file the correct official forms.

Debtors' motion argues, in relevant part, that "Debtor's [sic] counsel reasonably believed, and continues to believe, he was in compliance with the Order of this Court" because "the 'New' forms are substantially identical to the 'Old' forms," and contain "little substantive differences." (Debtors' Mot. at 1 ¶¶ 6-7.) The Court disagrees.

The revised official forms take into account and reflect changes in the law, including those made by the "Bankruptcy Abuse Prevention and Consumer Protection Act of 2005," which is applicable to this case. There are indeed significant substantive differences between the

outdated forms Debtors filed in this case, and the revised official forms. Debtors' counsel could not have reasonably believed that he was in compliance with the Court's May 12, 2006 Order.

Debtors' failure to correct the problem before the case was dismissed was inexcusable. The revised official forms required by the Court's May 12, 2006 Order (and by Fed.R.Bankr.P. 9009) have been widely available, including through the Court's website, and hundreds of other Chapter 7 debtors in this district, including many *pro se* debtors, have managed to use the correct official forms since they were revised in October 2005. Debtors' failure to act timely, and the arguments in Debtors' motion, seem to reflect an attitude by Debtors' counsel of defiance toward the applicable rules and official forms, which is unacceptable.

The Court notes further that the dismissal of the case was not with prejudice or with any bar to the Debtors raffling for bankruptcy, using the correct forms. It is unfortunate if, as Debtors argue, their credit counseling certificates expired on June 9, 2006. But this could have been avoided had Debtors complied with the Court's May 12, 2006 Order before the case was dismissed on May 31, 2006. And Debtors could have refiled bankruptcy after May 31, 2006 and before June 9, 2006, rather than filing two meritless motions for reconsideration. There is no good reason to set aside the dismissal and to reinstate this case. Accordingly,

IT IS ORDERED that the motion for reconsideration should be, and hereby is, DENIED.

Date: June 29, 2006

/s/ Thomas J. Tucker
Thomas J. Tucker
United States Bankruptcy Judge